

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ABINGDON DIVISION**

*Jennifer R. Bockhorst, Assistant United States Attorney, Abingdon, Virginia,
for United States; Shelby Lynn Winebarger, Pro Se Defendant.*

The defendant, Shelby Lynn Winebarger, has filed a motion pursuant to 28 U.S.C. § 2255. I find that the United States' Motion to Dismiss must be granted.

The defendant was sentenced by this court on May 18, 2009, after pleading guilty conspiring to possess or possess with intent to distribute controlled substances, in violation of 21 U.S.C. § 846 (Count One) and possession of a firearm in furtherance of a drug trafficking offense, in violation of 18 U.S.C. § 924(c) (Count Three). He was sentenced to 78 months imprisonment on Count One, and a statutory mandatory consecutive sentence of 60 months on Count Three. Effective November 1, 2015, his sentence on Count One was reduced to 63 months pursuant to Amendment 782 of the Sentencing Guidelines.

On June 20, 2016, Winebarger filed a pro se motion pursuant to 28 U.S.C. § 2255, contending that his sentence was invalid based upon the holding of the Supreme Court in *Johnson v. United States*, 135 S. Ct. 2551 (2015). The United States has filed a Motion to Dismiss, asserting that Winebarger's § 2255 motion is without merit.

Winebarger's motion does not raise any *Johnson* claim. He was not sentenced under the Armed Career Criminal Act and had no Guideline enhancements due to prior crimes of violence. His sentence under § 924(c) was predicated on a drug trafficking offense and not on a crime of violence. Accordingly, his motion does not state a claim for relief and is barred by the applicable one-year statute of limitations. 28 U.S.C. § 2255(f).

For these reasons, the United States' Motion to Dismiss will be granted and the § 2255 motion dismissed.

A separate final order will be entered forthwith.

DATED: August 8, 2017

/s/ James P. Jones
United States District Judge